

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2135 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

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RATANJI D PATEL

Versus

STATE OF GUJARAT

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Appearance:

Shri A.J. Patel, Advocate, for the Petitioner

Shri A.G. Uraizee, Advocate, for the Respondent

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 13/08/96

ORAL JUDGEMENT

The order passed by and on behalf of the State Government on 1st February 1988 under sec. 20(2) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) is under challenge in this petition under art. 226 of the Constitution of India. By its impugned order, the State Government withdrew the exemption granted under sec. 20(1) of the Act by its order passed on 4th March 1978 with respect to two parcels of land bearing survey

Nos. 55 and 56 admeasuring 20032 and 31870 square meters respectively situated at village Tunky within the urban agglomeration of Surat (the disputed lands for convenience).

2. It is not necessary to set out in detail the facts giving rise to this petition. The disputed lands were granted exemption on certain terms and conditions under sec. 20(1) of the Act by the order passed by and on behalf of the State Government on 4th March 1978. The terms and conditions included use of the disputed lands only for agricultural purposes and not to raise any construction therein. It appears that some construction was found raised in the disputed lands and it was also found that they were not used for agricultural purposes. Thereupon a show-cause notice came to be issued on 30th May 1988 under sec. 20(2) of the Act calling upon the petitioner to show cause why the exemption granted to the disputed lands should not be withdrawn. Its copy is at Annexure B to this petition. The petitioner filed its reply thereto on 6th June 1988. Its copy is at Annexure C to this petition. After hearing the petitioner, by the order passed by and on behalf of the State Government on 1st February 1989 under sec. 20(2) of the Act, the exemption granted to the disputed lands came to be withdrawn. Its copy is at Annexure G to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for questioning its correctness.

3. So far as the land bearing survey No. 55 is concerned, the petitioner has no objection if exemption granted to it is withdrawn. It was so stated before the author of the impugned order at Annexure G to this petition. In that view of the matter, it deserves to be affirmed at least qua survey No. 55.

4. It appears that exemption qua survey No. 56 was withdrawn on the basis that it was not subjected to any agricultural operations and that some construction was raised therein which was removed not in very remote past. This finding was reached on the basis of the so-called on-the-spot inspection made by one Deputy Collector to the site and the report prepared by him on the basis of such inspection. It appears that a panchnama was also drawn for the purpose. The grievance of the petitioner in that regard is that he was neither associated with the so-called on the spot inspection by the Deputy Collector nor was he supplied a copy of the report made by the Deputy Collector with respect to his on-the-spot inspection and also a copy of the panchnama drawn at the

relevant time.

5. The aforesaid grievance is voiced by the petitioner in grounds Nos. 3,4 and 5 in para 8 in the memo of this petition. No reply affidavit has come to be filed by or on behalf of the respondent. The averments in that regard have thus remained uncontroverted.

6. Learned Assistant Government Pleader Shri Uraizee for the respondent informs me that one official from the office of the concerned department of the respondent is present with the record of the case. On its perusal it is found that the petitioner was not associated with the so-called on the spot inspection made by the Deputy Collector to the site nor was the petitioner supplied a copy of the report made by the Deputy Collector of his visit to the site and no copy of the panchnama drawn at the relevant time was also supplied to the petitioner.

7. It cannot be gainsaid that the material relied on for the purpose of deciding a case against a party should be brought to the notice of the affected party if principles of natural justice have to be observed. The function performed by the concerned authority under sec. 20(2) of the Act can be said to be quasi-judicial in nature. Every quasi-judicial authority is required to observe principles of natural justice in view of the settled legal position in that regard. In the present case, principles of natural justice cannot be said to have been observed on account of not associating the petitioner with the on the spot inquiry made by the Deputy Collector at the site and in the alternative non-supply of the copy of the report of the Deputy Collector as well as a copy of the panchnama drawn at the relevant time to the petitioner. In this view of the matter, the impugned order at Annexure G to this petition cannot be sustained in law as an order passed in contravention of principles of natural justice is null and void according to the settled legal position in that regard.

7. In the result, this petition is accepted qua survey No. 56. The order passed by and on behalf of the State Government on 1st February 1989 at Annexure G to this petition is quashed and set aside qua survey No. 56 only. The matter is remanded to the respondent for restoration of the proceeding to file and for its fresh decision according to law after giving an opportunity of hearing to the petitioner and after supplying to him a copy of the report of the Deputy Collector with respect to his visit to the site and a copy of the panchnama

drawn at the relevant time. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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